



June 7, 2011

NOTICE OF DISCIPLINARY ACTION

Sergeant Steven Sealey
Lakeland Police Department

RE: ORS/IA Cases #09-033 & #10-026

Dear Sergeant Sealey:

Given the extensive material associated with these two Operational Review Section/Internal Affairs (ORS/IA) cases, I would like to begin by providing a summary chronology of some relevant events:

- On July 6, 1992, you were initially employed by the City of Lakeland as a Police Officer.
- On September 10, 2000, as a Detective, you were first assigned to the Operational Review Section (ORS) of the Lakeland Police Department (LPD) in the capacity of "Accreditation Officer."
- On September 9, 2001, you were assigned to work in the capacity as an Internal Affairs (IA) Detective.
- On or about June 1, 2003, you were promoted from Detective to the rank of Sergeant and were transferred out of IA to the Patrol Division.
- On or about January 25, 2008, you assumed the duties of the Officer in Charge (OIC) of the ORS of the LPD. The ORS includes the Internal Affairs component of the Department.
- On May 23, 2008, an incident occurred at the Chili's restaurant in south Lakeland involving then Lieutenant Ralph Schrader and then Assistant State Attorney Mr. Mark McMann. Schrader's now ex-wife, Lisa Schrader was also present at the restaurant, as was Ms. Melissa Mumbauer, and a number of off-duty LPD Officers and Detectives. Among the LPD sworn personnel present included now Acting Officer in Charge/Acting Sergeant of ORS/IA Detective Kelli Collins.
- On May 24, 2008, Mr. McMann reported the May 23rd incident to Lieutenant Jody Sisson of the LPD. Lieutenant Sisson provided Mr. McMann the telephone number for the Department's ORS/IA.
- On May 27, 2008, Mr. McMann left a voicemail message on the telephone of the ORS/IA, after which Lt. Schrader forwarded a text message to Lisa Schrader which stated "Your boyfriend called to complain, let the games begin." Mr. McMann spoke with you and provided you with information about the Chili's

incident. Mr. McMann reported that you responded by asking him, something to the effect of "If this was a plumber, would you be doing this?"

- Mr. McMann complained to the LPD that on May 29, 2008, while he was in the company of Lisa Schrader at Lake Parker Park, Lt. Schrader engaged in misconduct directed to and/or experienced by both he and Lisa Schrader. Mr. McMann reported that he captured some relevant conduct of Lt. Schrader at the Lake Parker Park on the video-recorder of his cellular telephone. Mr. McMann reported that he later offered that video to both you and Captain Greg Policastro, but that neither of you obtained that video from him.
- A letter dated June 4, 2008 was forwarded to State Attorney Jerry Hill, by Ralph Schrader. In that letter, Schrader informed State Attorney Hill that Mr. McMann had telephoned the LPD numerous times during the Memorial Day weekend and wanted to file a complaint against him. Schrader continued in the letter by stating that you had "called [him] up to Internal Affairs"; he (Ralph Schrader) informed you "what happened" and that you later informed him that Mr. McMann wanted to file a complaint against him. Ralph Schrader, in that letter, continued to present detailed statements about allegations of Mr. McMann.
- On or about June 10, 2008, then Chief Boatner assigned Cpt. Policastro to investigate the above mentioned allegations against Lt. Schrader (ORS/IA case #08-024).
- On or about June 17, 2008 Mr. McMann's written "complaint" about Lt. Schrader was received by the LPD Internal Affairs and the Departmental form known as the "Employee Incident Report" (EIR) was executed by Chief Boatner. As memorialized in the EIR, Chief Boatner selected Captain Greg Policastro to conduct the internal administrative (IA) investigation of ORS/IA case #08-024 of then Lt. Schrader. This action was in accordance with the long-standing LPD practice to assign internal administrative (IA) investigations to higher ranked Officers not regularly assigned to Internal Affairs when an Officer under administrative investigation is above the rank of Sergeant.
- On July 23, 2008, Mr. McMann submitted to a sworn interview in ORS/IA case #08-024. You elected to join Cpt. Policastro in the interview room where and when that interview occurred and to remain there throughout the interview. Cpt. Policastro began interviewing Mr. McMann, but soon after the onset of the interview, you assumed the role of Interviewer and questioned Mr. McMann for virtually the remainder of the one (1) hour and ten (10) minute interview.
- Cpt. Policastro reported in his ORS #08-024 investigative report that on July 28, 2008, roughly one (1) and one-half months after assuming his responsibility as the assigned lead Investigator in the matter, you contacted and communicated with Melissa Mumbauer on several occasions. Ms. Mumbauer reported that following your communications with her she declined to submit to a formal interview.
- In October 2008, then Chief Roger Boatner forwarded direction to Assistant Chief of Police (ACOP) Debra Henson, Lt. Schrader, yourself, Cpt. Policastro, Mr. McMann and others directing, among other things, that any new information about the above-described Chili's or Lake Parker incidents be forwarded to Cpt. Policastro. The same letter informed all that the Polk County Sheriff's Office had

filed a criminal charge of "Stalking" against Lt. Schrader (from which a new Internal Affairs case was opened, ORS/IA #08-057), identifying Lisa Schrader as the victim of that stalking. Further, the letter directs all addressees to report any information or allegations regarding Lt. Schrader, other than the criminal Stalking case, and other than the Chili's and Lake Parker incidents to you.

- In late October 2008, Cpt. Policastro signed and provided his investigative report in ORS/IA #08-024. Pursuant to General Order (G.O.) of the LPD, 11-1.3E, when supervisors (persons outside ORS/Internal Affairs) are assigned to conduct administrative investigations of Officers, Internal Affairs must "...review the report for sufficiency of investigation and then return the report for review by the member's entire Chain of Command." You endorsed that report as ORS/IA "approved." In so doing, pursuant to LPD G.O. 11-1.3E, by endorsing Cpt. Policastro's investigative report as "Approved", you approved the "...sufficiency of investigation." The Chain of Command for the subject Internal Affairs investigation of Lt. Schrader subsequently reviewed the report and any other materials supplied by Cpt. Policastro and suggested a finding of "exonerated" on the allegations of policy violation.
- In January 2009, the marriage of Ralph Schrader and Lisa Schrader was dissolved.
- In March 2009, Lisa Schrader obtained a Temporary Injunction for Protection Against Domestic Violence, against R. Schrader.
- On July 24, 2009, TV Channel 10 aired a story reporting that Mr. McMann claimed the LPD was "covering up" misconduct of Lt. Schrader; including that he stalked both him and Lisa Schrader.
- In August 2009, you and Mr. McMann were in the vicinity of the Polk County/Bartow courtroom or hearing room in which a Judge was considering a Motion filed by Ralph Schrader for a domestic injunction matter initiated by Lisa Schrader against him. When you attempted to enter the hearing room, it was reported that Mr. McMann contacted a Bailiff who then refused your entry into the hearing room. Lisa Schrader later reported she had never witnessed you "so angry as [you] appeared to be at that time." Mr. McMann reported that after the Bailiff refused your entrance into the hearing room, you turned to him and said "Some day." Mr. McMann described your demeanor at that time as aggressive.
- On August 20, 2009, Mr. McMann forwarded an e-mail to Chief Boatner, with "copies" to the Lakeland Mayor, myself as City Manager, then Commissioner Gow Fields, LPD Police General Counsel Roger Mallory, et al. in which he made a number of complaints. Among the complaints detailed in that email was the above-referenced August 2009 incident outside the hearing room at the Polk County/Bartow courthouse in which you uttered the phrase "Some day", and that Chief Boatner will fail to detect a "problem" with your above-described behavior, will "rationalize" it as non-consequential, and do nothing in response.
- On August 24, 2009, Mr. McMann forwarded an e-mail to Mr. Mallory in which he claimed that he "...dealt with [your] hostility throughout [the] IA 'investigation'..."

- On or about September 2009 the City contracted with Mr. Craig Harper, an Associate and Polygraph Examiner for the Orlando firm of "George Steinbarger & Associates" to perform investigative work, etc. on behalf of the City into allegations against Lt. Schrader. Lakeland Police Department General Counsel Mallory had confirmed with the Florida Department of Law Enforcement (the state agency responsible for government administrative regulation of persons entering into and performing the role of Police Officer in Florida) that Mr. Harper, a retired Orlando Police Department Detective, continued to be recognized by them as a person who meets all minimum standards required to be a Police Officer in the State of Florida. That status allowed Mr. Harper to work as a Police Officer if employed as such by any state, county or city government entity in Florida. The City of Lakeland employed Mr. Harper in the role of Internal Affairs Investigator; authorizing him to perform all the duties of an LPD Internal Affairs Investigator. Detective Collins opened the original ORS/IA #08-057 (violation of criminal law case-stalking) and immediately held it in abeyance while criminal prosecution of Lt. Schrader continued. On Dec. 22, 2009, before the criminal "stalking" trial, via memorandum issued to Mr. Harper, I authorized the reassignment of ORS/IA #08-057 from Det. Collins to Mr. Harper through a formal writing entitled "Revised Scope of Investigative Services." Within a month or so of Mr. Harper assuming investigative responsibilities, he had spoken with Mr. McMann, and others witnesses, and had reviewed the transcript and audio-recording of the above-mentioned, July 23, 2008 sworn interview of Mr. McMann by yourself and the assigned investigator, Cpt. Policastro.
- On September 22, 2009, acting in my capacity as Acting Chief of Police, (as the authorized Supervisor of the Chief of Police per the Lakeland City Charter) I authorized the investigation of you, Lt. Schrader and then Chief Boatner all under the single administrative ORS/IA case #09-033. That administrative case, with regard to you, arose from Mr. McMann's complaints against you, but was subsequently expanded in scope to include allegations of misconduct relating to your communications with Ms. Melissa Mumbauer and, subsequently another incident (described briefly below) in which it was alleged you engaged in misconduct at the Polk County/Bartow courthouse during the criminal "Stalking" trial of Ralph Schrader.
- On December 6, 2009, Chief Boatner transferred you out of the ORS/IA Unit and reassigned you to the Uniform Patrol section of the LPD.
- On approximately December 8, 2009, ORS #08-024 was reopened and that matter was also assigned to Mr. Harper.
- On January 26, 2010, Lt. Phillip Petote of the Polk County Sheriff's Office (PCSO) advised Chief Boatner, Mr. Mallory and Assistant Chief "Bill" LePere that he had learned from PCSO Detention Deputy (Bailliff) Tony Goss earlier that morning that outside the courtroom where the Ralph Schrader criminal "Stalking" trial was being held, you confronted PCSO Deputy Goss and advised him that he was the subject of an Internal Affairs investigation. Lt. Petote of the PCSO further advised that he then questioned you if you were alleging to be an Internal Affairs officer. Lt. Petote advised that you responded in the affirmative.

- On April 26, 2010, in ORS/IA case # 09-033, Cpt. "Randy" Harrison conducted the formal interview of you as a subject Officer in that matter.
- On June 2, 2010, Assistant State Attorney Hope Pattey provided a sworn statement to Investigator Harper and Det. Collins. In that sworn statement, ASA Pattey was questioned about the words and conduct of LPD Officers in depositions taken in preparation for the criminal Stalking trial of Schrader. When recalling and describing the conduct of another LPD Officer, ASA Pattey testified that, in your deposition, you were "very adamant" that she, if she chose, had the power to drop the case against your friend Ralph Schrader. Assistant State Attorney Pattey continued in her statement by describing the deposition words and conduct of other LPD Officers as "professional."
- On June 2, 2010, based on allegations against you, in which Assistant Chief of Police (ACOP) Debra Henson, Cpt. Victor White and Lt. Anne-Marie Wendel joined, I authorized the initiation of a new administrative investigation; ORS/IA case #10-026. The central focus of ORS/IA #10-026 was to investigate the allegations of ACOP Henson, Cpt. White and Lt. Wendel, i.e., that you may have been untruthful in Cpt. Harrison's April 26, 2010 interview of you and failed to cooperate fully with Mr. Harper and Cpt. Harrison in the ORS/IA case #09-033.
- On January 20 and 21, 2011, upon your request, a "Complaint Review Board" (CRB) was convened solely for ORS/IA #09-033 and provided their advisory findings to me.
- On February 17, 2011, your due process hearing was held in ORS/IA cases # 09-033 & #10-026. You elected, in that hearing, to not provide any statement, information, or evidence. Your legal counsel (and legal counsel for the PBA) made only a very brief comment.
- On February 23, 2011, you sent me an e-mail in which you asked that I "completely review the entire file, not just the summary completed by Harper and Mallory. I ask this because when you do this you will see that they are two different investigations and that Harper's summary does not match the facts in the file." The email subsequently stated that you believed "the questions asked by Harper would not render the answers to the allegations made against me. The board members assured me that they had read the entire file. I am confident that this is the reason they came to their unanimous conclusion to exonerate me of all the allegations."

For reasons described and presented separately below, I have determined to disregard both the "advisory opinion" of the CRB (limited to ORS/IA #09-033 case only), and the materially and significantly inconsistent findings and recommendations of ACOP Henson (in both ORS/IA #09-033 and #10-026).

Complaint Review Board

As stated above, in rendering final City action as to your actions in ORS/IA case #09-033, I have determined to disregard or assign no weight to the advisory findings of the Complaint Review Board (CRB) for reasons which I will outline below:

1. Pursuant to LPD G.O. 11-2.3C4, the standard of proof by which the evidence was to be evaluated by the CRB is "clear and convincing," whereas the routine practice of the LPD Chief of Police is to utilize the significantly lower standard of proof of "preponderance of the evidence." Furthermore, the Collective Bargaining Agreement between the West Central Florida Police Benevolent Association and the City of Lakeland establishes that standard as "just cause." While serving in the limited capacity as Coordinator of the CRB, LPD General Counsel Mallory was summoned into the CRB during the first morning of their collective review and deliberations to clarify for them the standard of proof they were to utilize in their proceedings. Mr. Mallory reported that the CRB also questioned him concerning the various standards of proof utilized by police agencies, including the LPD Chief of Police, in rendering a conclusion to a disciplinary matter, as well as that utilized in arbitration proceedings.
2. The investigative report in this matter totaled 40 pages in length. Although LPD G.O. 11-2.2B requires the CRB Coordinator to only provide copies of the investigative report to the members of the CRB, the members of the CRB requested that all evidence and materials be provided to them. Documents and documentary evidence in this matter totaled approximately 2,000-2,500 pages. Copies of whatever could be duplicated in the matter were delivered to each member of the CRB, including copies of every audio recording produced in the investigation.

Pursuant to LPD G.O. 11-2.2B, materials are to be provided each member of the CRB two (2) days before the CRB first convenes. The CRB is required, as per G.O. 11-2.2A, to convene for no more than two (2) days before they must reach a "conclusion" to the matter. Accordingly, the CRB convened as a collective body for less than two (2) full business days; a significant number of hours of which were consumed by a briefing provided by Investigator Harper, and a presentation by Sgt. Sealey. The grand total of time during which the individual members of the CRB, and the CRB, collectively had to review, consider and evaluate the materials was therefore less than four (4) days.

In significant contrast to the time period in which the CRB had to review the investigative material, the LPD reviewing Chain of Command was provided approximately three (3) weeks before they first met with me to discuss their thoughts and preliminary findings regarding ORS/IA #09-033 (and #10-026).

And I, in greater contrast to the CRB, have been aware of the relevant allegations against you, and of investigatory discoveries made concerning ORS/IA #09-033, the case reviewed by the CRB, for a period of more than one (1) year.

3. Three (3) of the five (5) members of the CRB were law enforcement professionals from agencies other than the LPD. The Chairperson and a second member of the five (5) members of the CRB were, and are members of the Polk County Sheriff's Office (PCSO). Pursuant to Section 112.532(2) of the Florida Statutes, the PCSO, as other Sheriff's Offices in the State of Florida are not required by the Police Officer Bill of Rights (POBR) (Sections 112.531 thru 112.535, Florida Statutes) to provide a CRB to their members. A "Complaint

Review Board" is a creation of Section 112.532(2) of the Florida Statutes, but very little definition or details are provided therein. Those are supplied by police agencies in Florida. Sheriffs of Florida, including the PCSO, utilize a roughly equivalent process to a CRB via a board entitled "Disciplinary Review Board."

Several key distinctions between the LPD CRB and the PCSO "Disciplinary Review Board" are that "Disciplinary Review Boards" of the PCSO are comprised exclusively of PCSO members, are to "assemble" within a ten (10) day period, no standard of proof is defined, and a written summary of the Board's findings and recommendations must be provided the Sheriff as to each and every charge. Although I sincerely appreciate the challenge accepted by members of the CRB in ORS/IA case #09-033 to review a very complex investigation involving thousands of documents and evidence, but by policy, their review was limited to a period of less than four (4) days.

4. A LPD CRB provides no written "summary", analysis or support of their findings. A LPD CRB is required to only "check" the box on a document beside the "finding" selected; i.e., either "Unfounded," "Exonerated," "Not Sustained," or "Policy Failure."
5. The CRB, as per LPD policy, did not make recommendations regarding discipline.
6. Following the presentation of the findings of the CRB, three (3) members of the CRB cease any further involvement in the ongoing business and function of the LPD.
7. The standards of conduct and enforceable expectations of the LPD and the City administration, of its law enforcement officers, are ultimately unique to the LPD and the City of Lakeland.
8. Per LPD policy, the findings of the CRB are formally described as advisory in nature; i.e., they are intended to serve, with regard to the issue of findings alone (not discipline), as advice to me acting in my role as Chief of Police for purposes of ORS/IA #09-033 and #10-026.

Assistant Chief of Police Deborah Henson "Findings"

As stated above, in rendering final City action regarding your actions in ORS/IA cases #09-033 and #10-026, I have determined to disregard or assign no weight to the findings or recommendations of ACOP Henson for a number of reasons as delineated below:

1. Prior to the Chief rendering the Final Agency Action in the administrative matter it is the long-standing practice of the LPD administration to conduct a "Chain of Command" meeting or meetings in which the Chief of Police, Police General Counsel, the Assistant Chief of Police under which the subject officer is assigned, together with other reviewing members of the subject officers (or the assigned) Chain of Command, discuss their respective thoughts regarding

probable findings and probable recommendations for the final disposition of the matter. On May 26, 2010, such a meeting was held with the reviewing Chain of Command regarding ORS/IA #09-033. In that meeting, ACOP Henson reported her position to be that she, as Lt. Wendel, would sustain a violation of all ten (10) policies identified in the administrative matter as most likely to apply to the allegations against you. ACOP Henson further recommended that both then Chief of Police Boatner and Cpt. Greg Policastro also be investigated for possible policy violations, misconduct or negligence.

The bases for launching ORS/IA case #10-026 were also revealed and discussed in the May 26, 2010 Chain of Command meeting. On June 2, 2010, I subsequently authorized the initiation of ORS/IA case #10-026 and on September 13, 2010, the reviewing Chain of Command met to discuss their thoughts regarding #10-026. The policies identified in #10-026 as most applicable to the allegations are the following:

- a) "Internal Affairs Unit", General Order (G.O.) 11-1.1G, (Sanction Class 1); (requiring full cooperation with and truthful answers to questions posed in administrative investigations);
- b) "Compliance with Lawful Orders", G.O. 3-1.3C, (Sanction Class 4); (also requiring truthful answers to all question posed to them), and;
- c) "Compliance with Lawful Orders", G.O. 3-1.3D, (Sanction Class 1); (requiring members to obey lawful orders of Internal Affairs investigators and to cooperate fully with them).

At that meeting, ACOP Henson, along with Lt. Wendel announced they would sustain violations of all three (3) above General Orders/policies and would recommend that you be demoted.

2. On October 13, 2010, ACOP Henson forwarded a memorandum to me in which she stated she had reviewed the "files" of #09-033 and #10-026 in their "entirety"; including "...evidence presented and taped statements submitted." Although offered no new evidence since being provided the investigative materials in May 2010, ACOP Henson concluded in her October 13, 2010 memorandum that she reached the finding of "Other" as to each and every policy (G.O.) cited in both #09-033 and #10-026. A review of G.O. 11-1.6B reveals that the permissible finding of "Other" means "[t]he evidence supports a sustained violation for some other matter discovered during the investigation." ACOP Henson, in her October 13, 2010 memorandum, failed to identify a single "other matter discovered during the investigation" and concluded therein "...we can only hold subordinate supervisors accountable when they have been given comprehensive instruction and clear direction" whereas "[a] review of the Chief and Captain's statements clearly demonstrate a total lack of direction and oversight..."

It should be noted that while many LPD Officers are elevated in rank or transferred to positions in which they lack specific training or experience, at all relevant times you possessed over three (3) full years of experience working in the Operational Review Section/Internal Affairs (ORS/IA) Section of LPD, almost two (2) full years of which was as an Internal Affairs Investigator and five (5)

months as the Officer in Charge of the ORS/IA Section. Furthermore, LPD General Order 3-1.7A requires all "[m]embers... to maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions."

3. Following receipt of a request for clarification from me regarding her October 13, 2010 memorandum, ACOP Henson forwarded another memorandum to me dated October 21, 2010 regarding her disciplinary recommendations concerning #09-033 and #10-026. ACOP Henson's October 21, 2010 memorandum reported she had reached different findings then revealed in her October 13, 2010 memorandum, i.e., she sustained violations of the following policies in #09-033:

- a) Conduct Unbecoming, General Order (G.O.) 3-1.2A1 (Sanction Class 6)
- b) Conduct Unbecoming, G.O. 3-1.2A2 (Sanction Class 6)
- c) Conduct Unbecoming, G.O. 3-1.2A3 (Sanction Class 6)
- d) Special Privilege, G.O. 3-1.5A (Sanction Class 6)
- e) Job Knowledge and Performance, G.O. 3-1.7A (Sanction Class 6)
- f) Job Knowledge and Performance, G.O. 3-1.7C (Sanction Class 7)
- g) Courtesy, G.O. 3-1.8B (Sanction Class 7),

and, reached a finding of "Not sustained" for the remaining three (3) policies cited in #09-033, and a finding of "Not sustained" in the policies cited in #10-026. In her October 21, 2010 memorandum, ACOP Henson provided no explanation for the changes to her findings.

Internal Affairs Case #09-033

The members of the select Chain of Command charged with the responsibility to review, and make recommendations concerning this case were ACOP Henson, Cpt. White and Lt. Wendel. Ten (10) City and LPD policies had been selected as most likely to relate to the allegations of your alleged misconduct or neglect. In seven (7) out of the ten (10) policies cited, the three (3) members of the reviewing Chain of Command were ultimately unanimous. Disregarding the findings and recommendations of ACOP Henson as stated above, the balance of the reviewing Chain of Command, began and ended in unanimity with regard to the findings of the same seven (7) policy violations cited. Based upon my review of the allegations, facts, evidence, and recommendations, I too find you violated those seven (7) policies. The title, policy number, and associated sanction class assigned each of those seven (7) policies are as follows:

- 1) Conduct Unbecoming, General Order (G.O.) 3-1.2A1 (Sanction Class 6)
- 2) Conduct Unbecoming, G.O. 3-1.2A2 (Sanction Class 6)
- 3) Conduct Unbecoming, G.O. 3-1.2A3 (Sanction Class 6)
- 4) Special Privilege, G.O. 3-1.5A (Sanction Class 6)
- 5) Job Knowledge and Performance, G.O. 3-1.7A (Sanction Class 6)

6) Job Knowledge and Performance, G.O. 3-1.7C (Sanction Class 7)

7) Courtesy, G.O. 3-1.8B (Sanction Class 7)

The three (3) remaining policies identified as most likely applicable to the allegations, were as follows:

8) Improper Conduct, G.O. 3-1.17A (Sanction Class 5)

9) Law Enforcement Code of Ethics, G.O. 3-2.1 (Sanction Class N/A)

10) Willful Neglect of Duty, City of Lakeland PPM, (Group 3)

Given the greater applicability and clarity offered in the policies itemized above at numbers 1-8, inclusive, and 10, I do not wish to find that you violated item #9; the LPD policy entitled "Law Enforcement Code of Ethics." I, as did Lt. Wendel, do find however, that you violated the LPD policy entitled "Improper Conduct" (G.O. 3-1.17A, Sanction Class of 5), and City of Lakeland Personnel Policy of "Willful Neglect" of Duty (see City PPM, pg. 107 and 109c; involving a sanction of up to and including termination). Pursuant to LPD G.O. 11-3.1, "[a]ll members are expected to know and observe the policy...of the City of Lakeland Personnel Policy and Procedures Manual." Although Cpt. White reported his findings regarding these two (2) policies to be "Not Sustained", please note that a finding of "Not Sustained", as per LPD General Order 11-1.6B, is a finding there is "[i]nsufficient evidence to prove or disprove an allegation." Differences of opinion regarding the level or weight of the evidence can cause very different conclusions, but may exist as differences in the weight of the evidence of nothing more than a single feather. If a significant difference in weight, the appropriate finding, as per LPD policies, would be either that the allegation was false (i.e., "unfounded"), or the relevant behavior, "proper" i.e., "exonerated."

I find that your actions demonstrated intentional and knowing interference with the administrative investigation of Lt. Schrader. In so doing, you engaged in "improper conduct" and willfully neglected the performance of duties. The LPD policy entitled "Improper Conduct", G.O. 3-1.17A, may be violated by either:

1. the knowing interference with a criminal or administrative investigation, or
2. by directly or indirectly attempting to secure the withdrawal or abandonment of a complaint or charge by threatening or bribing.

Over one (1) month after Cpt. Policastro was assigned to investigate Lt. Schrader, you elected to participate in the sworn interview of Complainant Mr. McMann. The interview, occurring on July 23, 2008, was the first formal interview of Mr. McMann concerning his allegations against Lt. Schrader. All police agencies in Florida are required, pursuant to Section 112.533(1) of the Florida Statutes, to "...establish and put into operation a system for the receipt, investigation and determination of complaints...from any person..." The purpose of the interview of Mr. McMann, as is the case with all interviews of Complainants in Internal Affairs matters is to obtain an oral sworn statement of the citizen who desires to complain against an LPD member. The interview is designed to gather information, conduct "discovery", and to identify and gather evidence, if any is available, concerning the complaint(s) of LPD member's

alleged misconduct or neglect. Such interviews are not to be adversarial and Complainants are not to be treated like hostile witnesses. If, and only if the Complainant presents testimony that is contrary to the evidence or the testimony of other credible witnesses should the interviewer be allowed to venture cautiously outside the role of courteous employee merely gathering information to that perhaps of respectful and constructive confrontation of the person presenting contrary testimony. Mr. McMann's interview on July 23, 2008 was for the sole purpose of obtaining his initial statement regarding Lt. Schrader's alleged infractions. There was therefore, no proper basis upon which to confront, cross-examine or challenge his allegations as contrary to another credible witness as no sworn testimony had yet been obtained from another witness. I also find that your representations or suggestions to Mr. McMann during that interview regarding law and policy to be considerably erroneous. The City of Lakeland, its citizens and the members of the LPD deserve to be served by an Officer in Charge of ORS/IA who has "...maintain[ed] sufficient competency to properly perform their duties and assume the responsibilities of their position." (See G.O. 3-1.7A.) I believe your actions demonstrate a failure in this regard, and as such, I sustain your violation of G.O. 3-1.7A.

While further observations are made below in this regard, your questioning and cross-examination of Mr. McMann in the July 23, 2008 interview demonstrates that you interfered with the administrative investigation of Lt. Schrader by not just inserting yourself into the subject interview of Mr. McMann, but by transforming the interview into your own personal attack on him. In this regard, I sustain your violation of G.O. 3-1.7C. Rather than simply attending the interview, and providing assistance therein only if requested by Cpt. Policastro, you ultimately assumed control and direction of the interview and attempted to destroy the credibility of Complainant McMann as he was providing damaging testimony against your friend, Ralph Schrader. This may have been fueled by your beliefs that Mr. McMann was having an "extra marital affair" with Lisa Schrader, the then wife of Ralph Schrader; a belief you stated as a conclusion of fact in a letter you later provided in support of a motion to change the venue of the Lt. Schrader criminal "stalking" trial occurring in January 2010.

Cpt. Policastro was assigned as the investigator in ORS/IA case #08-024, not you. During the July 23, 2008 interview with Mr. McMann, you admitted that your friend, Ralph Schrader, visited you at your home about the time of an incident under discussion in the interview. Despite this, and despite you maintaining that you informed Chief Boatner that you should not be the Internal Affairs Investigator who investigates Lt. Schrader, you nevertheless not only quickly assumed command, control and the direction of the interview of Complainant McMann, you also elected to attend every Internal Affairs interview of witnesses in the ORS/IA #08-024 except that of Lisa Schrader.

On July 28, 2008 you spoke with Ms. Mumbauer on the telephone. Ms. Mumbauer reported to Investigator Harper that it was originally her intention in speaking with you to continue to make herself available as a witness in the Lt. Schrader administrative investigation, but that because you continuously defended Lt. Schrader, it became clear to her that you had already made up your mind. For this reason, Ms. Mumbauer claimed, she elected to no longer cooperate with the administrative investigation of Lt. Schrader.

Although Cpt. Policastro disappointingly, did not take sufficient action to ensure that you did not affect his investigation of the allegations against Lt. Schrader, I find, based on the totality of the circumstances I have reviewed, that you engaged in "Improper Conduct" in violation of G.O. 3-1.17A by knowingly interfering with Cpt. Policastro's investigation by:

1. discouraging the cooperation and development of Ms. Mumbauer as a witness;
2. engaging in the above-described behavior in both your communications with, and your unacceptable and unprofessional interview of Mr. McMann during the all-so-important initial, formal, sworn interview regarding his complaints against your friend Lt. Schrader.

As noted in the chronology above, then Chief Boatner assigned Captain Policastro to perform the administrative investigation of your friend, Ralph Schrader in ORS/IA case #08-024. Lakeland Police Department supervisors not assigned to Internal Affairs are often asked by the Chief of Police to perform "internal", administrative investigations of LPD members. When this occurs, pursuant to Lakeland Police Department G.O. 11-1.3E, the Internal Affairs component of the Operational Review Section is required to review the investigative report "...for sufficiency of investigation..."

In October 2008 Captain Policastro produced his investigative report in ORS/IA #08-024. You, as the friend of Ralph Schrader, not some other qualified LPD member, executed a statement imprinted on Captain Policastro's report which states you "approved" the report, and by doing so, pursuant to G.O. 11-1.3E, represented to all that Captain Policastro's investigation was 'sufficient.'

In addition to finding you engaged in "Improper Conduct" as stated above, I find, based on the totality of circumstances I have reviewed, that you "willful[ly] neglect[ed]" your job duties by:

1. failing to require Cpt. Policastro to obtain the McMann video-recording of Ralph Schrader conduct at Lake Parker Park, although it was shown and offered to you and Cpt. Policastro, as a condition to "approving" the Cpt. Policastro investigation as "sufficien[t]" as described above;
2. failing to require Cpt. Policastro to interview Renda Herchy and Angela Herchy, or to memorialize an honest but unsuccessful attempt to do so as a condition to you "approving" the Cpt. Policastro investigation as "sufficient." The Police Officer's Bill of Rights requires that before interrogating the subject officer "[a]ll identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of the investigative interview of the accused officer." Multiple witnesses interviewed in the Cpt. Policastro investigation identified, among other persons, Renda Herchy and Angela Herchy as witnesses at the Chili's event, yet the investigation you "approved" as "sufficient" contained no information or evidence to even suggest they were ever contacted nor was any effort documented to demonstrate it was not "possible" to interview them;
3. failing to require Cpt. Policastro, as a condition to "approving" his investigation as "sufficient", to pursue whether Lt. Schrader was in violation of LPD G.O. 19-3.4

~~"Take Home Vehicle Program/Required Equipment for Off-Duty Operation" by using his patrol vehicle while allegedly not having his LPD-issued primary firearm in his possession. Both yourself and Cpt. Policastro heard Lt. Schrader's statement concerning the May 29, 2008 Lake Parker incident involving Lisa Schrader and Mark McMann. A statement in which he denied having his LPD-issued firearm in his possession while operating his department vehicle in the location of Lake Parker Park and interacting with Lisa Schrader and Mark McMann. Given this knowledge, the scope of Cpt. Policastro's investigation of Lt. Schrader should have been expanded to include this additional, apparent policy violation. It was not, yet you, acting in your capacity as the Officer in Charge of ORS, including Internal Affairs, executed the statement reporting you "approved" the Capt. Policastro investigation as "sufficient" (see G.O. 11-1.3E.)~~

I am convinced to the sufficient degree of proof required that you therefore, committed two (2) separate instances of "Improper Conduct"/knowing interference with the ORS/IA case #08-024 investigation (with respect to Mumbauer and McMann). I am also convinced to the sufficient degree of proof required that you also committed three (3) separate instances of "Willful Neglect" of duties as described above; each a Group 3 offense under the City's PPPM. As stated above you, as the Officer in Charge of Internal Affairs failed to ensure that Cpt. Policastro's investigation of Ralph Schrader was "sufficient" as per policy. Your failure to perform this important duty, which by design is intended to ensure a check and balance or quality control measure, negatively impacted the course, the quantum of evidence gathered, and conclusions of the Cpt. Policastro investigation. Although supervisors are ultimately responsible for the actions of those who serve under them, they are also clearly entitled to rely upon the unbiased expertise of those who perform key logistical and qualitative control functions to ensure, in essence, that all the proper protocols and practices have been adhered to before they sign off on a final report. That is why Internal Affairs component of ORS is required to approve a report of an investigation not conducted by a member of the ORS. By endorsing Cpt. Policastro's investigative report as "Approved", you approved the "...sufficiency of [his] investigation," an investigation that was clearly and significantly flawed and inadequate.

On January 26, 2010, almost two (2) full months after being transferred out of the ORS/Internal Affairs Section, you engaged in conduct I also find to be unbecoming a member of the LPD (see G.O. 3-1.2) by approaching PCSO Bailiff Goss, outside the courtroom where Ralph Schrader was on trial for criminal "Stalking." In his sworn testimony, Bailiff Goss indicated that you "...leaned close to..." his face in a "...manner [that] was intimidating..." and "aggressive" and "demanded" his name while claiming "It is for an internal affairs investigation that I am conducting." In a later conversation with Lt. Phillip Petote of the PCSO, he reported that you responded to his question as to whether you were "from internal affairs" in the affirmative. This claim is clearly in conflict with your transfer out of ORS/IA to the LPD Patrol Division on December 6, 2009.

When you accepted the position of Officer in Charge of the Operational Review Section, including LPD's Internal Affairs Unit, you had previously served as an Internal Affairs investigator/Detective for a period of almost two (2) full years. On July 23, 2008, by the time you usurped the role of primary interviewer of Mr. McMann from Cpt. Policastro,

you had an additional five (5) months of experience as the Officer in Charge of the ORS/Internal Affairs Section.

An Officer in Charge of the Operational Review Section (including LPD's Internal Affairs Unit) reports, extraordinarily for LPD members, to one and only one supervisor - the Chief of Police. On January 25, 2008, by accepting the position of Officer in Charge of the Operational Review Section, including LPD's Internal Affairs Unit, you accepted a position of extraordinary trust, a very high duty, with exceptional responsibilities. That trust, duty and responsibility does not only arise in the relationship of City/Employer to Police Officer/Employee, but equally arises in the relationship of the LPD to the community. The duty of an Internal Affairs Investigator/Detective is not to "clear" Officers of allegations of misconduct. The duty of an Internal Affairs Investigator/Detective is to professionally, receptively and courteously obtain information from complainants, investigate the allegations, gather information and proof, and present those allegations and evidence for the Chain of Command to determine whether to advise the Chief of Police they find or do not find violations of policy. The Chain of Command, and ultimately the Chief of Police, should be able to confidently rely upon LPD administrative investigations when making some of the most difficult decisions they are asked to make, i.e. the determination of whether an Officer has violated departmental policy, and, if so, the corrective action or discipline that is appropriate. Based on the totality of the facts and evidence, and the consistent pattern of behavior you demonstrated from May 24, 2008 through January 26, 2010, (almost two (2) full months after your transfer out of Internal Affairs), I find that your conduct subverted this process both by knowingly interfering with the Cpt. Policastro investigation of your friend Ralph Schrader (in violation of G.O. 3-1.17A), and by "willful[ly] neglect[ing]" the performance of your duties; a "Group 3" offense under the City's PPPM.

I find your policy violations in this regard were not simply neglectful or willfully neglectful, but rather to be intentional and tactical. In contrast to merely "standing by" in the event Cpt. Policastro required your technical assistance as required of the Supervisor of ORS/IA, your actions broke down the door that separated you from the role of assigned Investigator, charged in and attempted to effect the outcome of the matter. I find that your decisions in this regard were influenced by your "...personal feelings, prejudices, animosities, or friendship[...]" for Ralph Schrader to whom you gave "...special consideration [or] privilege..." in violation of G.O. 3-1.5A and G.O. 3-1.8B. As an alternative to breaking that door down, you could have, very early in this matter, simply informed Chief Boatner that you were incapable of properly investigating your apparently close friend Ralph Schrader and respectfully and properly refused to obey any possible order to the contrary that would cause you to violate LPD policies.

Internal Affairs Case #10-026

When being interviewed, as the subject officer, by Lt. Hans Lehman, in ORS/IA case #09-033, you denied discussing Mr. McMann's complaints about Lt. Schrader with him (Lt. Schrader) before Schrader was formally interviewed in ORS/IA case #08-024. In the same formal interview, you repeatedly denied telling Lt. Schrader anything about the case #08-024 investigation. The focus of ORS/IA case #10-026 was whether you fully

cooperated with the administrative investigation into your conduct in the matter, and whether you provided truthful answers to questions posed to you.

The same members of the designated Chain of Command who reviewed ORS/IA case #09-033 also were designated to review ORS/IA case #10-026. The policies identified in #10-026 as most applicable to the allegations were:

- 1) "Internal Affairs Unit", General Order (G.O.) 11-1.1G, (Sanction Class 1); (requiring full cooperation with and truthful answers to questions posed in administrative investigations);
- 2) "Compliance with Lawful Orders", G.O. 3-1.3C, (Sanction Class 4); (also requiring truthful answers to all question posed to them), and;
- 3) "Compliance with Lawful Orders", G.O. 3-1.3D, (Sanction Class 1); (requiring members to obey lawful orders of Internal Affairs investigators and to cooperate fully with them).

Lt. Wendel reached a finding of "Sustained" as to all three (3) policies whereas Cpt. White reached a finding of "Not Sustained." It is important to recall, as stated above, the difference in the perceptions of the weight of evidence between a finding of "Sustained" and "Not Sustained" can be truly miniscule.

Although the weight of circumstantial evidence could reasonably lead one to a conclusion that your actions represented a violation of the above three (3) noted policies, I am not prepared to do so here, as there remains some conflict between the testimony and associated evidence of various individuals, including that of yourself, which leaves me to have some doubt as to which version, if any, is entirely accurate. As such, I am reluctant to reach a conclusion that in essence, would result in a Final Agency Action finding that you were untruthful; thereby very negatively affecting, if not perhaps ending your career in law enforcement.

Conclusion

I have sustained your violation of the following policies:

- 1) Conduct Unbecoming, General Order (G.O.) 3-1.2A1 (Sanction Class 6)
- 2) Conduct Unbecoming, G.O. 3-1.2A2 (Sanction Class 6)
- 3) Conduct Unbecoming, G.O. 3-1.2A3 (Sanction Class 6)
- 4) Special Privilege, G.O. 3-1.5A (Sanction Class 6)
- 5) Job Knowledge and Performance, G.O. 3-1.7A (Sanction Class 6)
- 6) Job Knowledge and Performance, G.O. 3-1.7C (Sanction Class 7)
- 7) Courtesy, G.O. 3-1.8B (Sanction Class 7)
- 8) Improper Conduct, G.O. 3-1.17A (Sanction Class 5)
- 9) Willful Neglect of Duty, City of Lakeland PPPM, (Group 3).

Items #1-3, inclusive:

The above items numbered 1-3, inclusive, are subcategories of the singular policy entitled "Conduct Unbecoming." General Order 3-1.2A1 and G.O. 3-1.2A3 prohibit unbecoming conduct, the impact of which is on the Police Department, whereas G.O. 3-1.2A2 prohibits unbecoming conduct, the impact of which is the 'discrediting' of the LPD member as an employee of the Police Department. I find that your misconduct in violation of LPD policy that negatively impacted the reputation (G.O. 3-1.2A1), operation and efficiency (G.O. 3-1.2A3) of the LPD pervaded throughout the matters investigated in ORS/IA 09-033. Rather than recite each and every distinguishable act of your unbecoming conduct that reflected negatively on the Police Department, I have elected to collapse them into a single violation of G.O. 3-1.2A1.

As stated above, General Order 3-1.2A2, however, is sufficiently distinct from G.O. 3-1.2A1 and G.O. 3-1.2A3, a difference in kind sufficient to merit consideration as a separate basis upon which to impose discipline. Again, rather than find individual violations of policy for each individual act of misconduct that "...reflect[ed] discredit upon..." you as a member of LPD, for purposes of determining discipline, I am collapsing them all into a single violation of G.O. 3-1.2A2.

Items #4-7, inclusive:

Given the facts and evidence presented, for purposes of determining the appropriate discipline to impose, I find you committed distinct violations of each of the policies cited above, as items 4-7, inclusive.

Item #8:

For purposes of discipline, I find you violated G.O. 3-1.17A, "Improper Conduct", in two (2) separate instances; as follows:

1. for discouraging the cooperation and development of Ms. Melissa Mumbauer as a witness during Captain Greg Policastro's investigation of Ralph Schrader misconduct, and
2. for knowingly interfering with Captain Greg Policastro's investigation of Ralph Schrader by directly or indirectly attempting to influence Complainant, Mark McMann to withdraw or abandon his complaints against your friend, Ralph Schrader.

Item #9:

With regard to the policy cited, I have reported, above, that I found three (3) distinct instances in which you violated City policy prohibiting the "Willful Neglect of Duty" (a "Group 3" offense). As described more fully above, then Chief Boatner assigned Captain Greg Policastro to investigate Ralph Schrader. By assigning the investigation to Captain Policastro, then Chief Boatner reached outside the ORS/IA unit to have a non-ORS/IA supervisor, a Captain, to investigate a then LPD Lieutenant (Schrader). When non-ORS/IA investigators conduct internal administrative investigations and produce an investigative report, pursuant to G.O. 11-1.3E, ORS/IA is required to review that report "...for sufficiency of investigation..." This is the sound and prudent quality control measure imposed on the process of non-ORS/IA supervisor administrative

investigations. It is the measure that allows, supports and should act to guarantee the investigation conducted was 'sufficient' under the law, policy and generally held standards of investigative competency. You signed Captain Policastro's investigative report stating that you approved that investigation.

The residents of the City of Lakeland, the City as a municipality, then Chief Boatner, the LPD, and all members of the LPD depended on you to perform that review with thoroughness, competency, and the absence of bias or prejudice. For purposes of imposing discipline I find that you, in three (3) distinct respects, willfully neglected to perform the required task, abbreviated from the description provided in the body of this writing above, as follows:

1. by approving Captain Policastro's investigative report as sufficient while failing to require Captain Policastro to exhaust all reasonable measures to obtain the McMann video-recording of Ralph Schrader's words and conduct at Lake Parker Park although it was shown and offered to you and Captain Policastro; and
2. by approving Captain Policastro's investigative report as sufficient while failing to require Captain Policastro to exhaust all reasonable measures to interview both Renda Herchy and Angela Herchy, as required by the Police Officer's Bill of Rights as a condition precedent to interviewing Ralph Schrader regarding the all-so-important incident at Chili's restaurant although multiple witnesses identified them as witnesses to the event.
3. by failing to require Captain Policastro, as a condition to approving his report as 'sufficient', and as required by the Police Officer's Bill of Rights as a condition precedent to interviewing Schrader, to expand the scope of his investigation and obtain all "existing" evidence regarding Schrader's assertion that he, although in violation of G.O. 19-3.4, was not in possession of his LPD-issued firearm while using his LPD-issued vehicle in the event occurring at Lake Parker Park on May 29, 2008.

In reviewing the various violations for which I have found discipline is appropriate, they are as follows:

1. Two (2) LPD Sanction Class 7 violations.
2. Four (4) LPD Sanction Class 6 violations.
3. Two (2) LPD Sanction Class 5 violations.
4. Three (3) City "Group 3" offenses.

When one accepts the position of Officer in Charge of the Operational Review and Internal Affairs Section of the LPD, they accept a position of high trust, duty and responsibility. In accepting that position, one must also accept the consequences that befall them when the administration determines their trust, and the trust of the community was violated, those duties neglected, abandoned or rejected, and those responsibilities unfulfilled. This is not to say that there were decisions made by others that would have eliminated the opportunity for you to so directly and unduly influence the outcome of the matter, but you, again and again, clearly chose to engage in acts of

misconduct that fell within the exercise of your independent discretion and were clearly not required by the role you were asked to fulfill.

Given the totality of the facts, evidence, nature of your violations and the considerations noted above, I have elected to impose discipline of a Suspension without Pay for a total of one month (14 consecutive work days at 12 hours per work day), for a total of one hundred sixty eight (168) hours. I hereby direct that your suspension commence no later than thirty (30) days of the date of this writing. Police Chief Womack will coordinate with your supervisor Cpt. Giddens who will notify you of the specific date of the onset of your period of suspension without pay.

The imposition of this discipline represents final agency action in ORS/IA cases #09-033 and #10-026.


Very truly yours,



Douglas B. Thomas
City Manager / Acting Chief of Police

ACKNOWLEDGEMENT OF RECEIPT

I, Sergeant Steve Sealey do hereby acknowledge receipt of this Notice on the 8th day of June, 2011.


WITNESS


SERGEANT STEVE SEALEY

LARRY R GIDDENS
PRINTED NAME OF WITNESS